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BAKER & BOTTS
30 ROCKEFELLER PLAZA
NEW YORK NY 10112

COPY MAILED**APR 24 2002****OFFICE OF PETITIONS**

In re Application of
Mitchell, et al.
Application No. 09/756,096
Filed: January 8, 2001
Docket No. A31304-B-A-B

DECISION ON PETITION

This is a decision on the "Petition for Question Not Specifically Provided For", filed September 24, 2001, with is being treated as a petition under 37 CFR 1.53 to accord the above-identified application a filing date of January 8, 2001, with Figure 11B of the drawings as a part of the original disclosure.

Application papers in the above-identified application were filed on January 8, 2001. However, on April 24, 2001, the Initial Patent Examination Division mailed applicant a "Notice to File Missing Parts of Nonprovisional Application." Applicant was notified that the application papers had been accorded a filing date; however, Figure 11B of the drawings appeared to have been omitted. In addition, applicant was informed that the oath or declaration was unsigned, that substitute drawings must be submitted, and that the application failed to comply with the Sequence Listing rules.¹

Preliminarily, applicant is advised that a petition under 37 CFR 1.53 filed more than two months after the action complained of may be dismissed as untimely without consideration on the merits.² The instant petition was filed more than two months after the mailing of the "Notice to File Missing Parts of Nonprovisional Application." However, in this instance, the Commissioner's discretion will be exercised in favor of applicant and the petition will be considered on the merits.

Applicant asserts that Figure 11B was with the application as originally filed on January 8, 2001. A review of the record reveals that a drawing sheet labeled Figure 11B was submitted with the application on January 8, 2001.

Accordingly, the petition is **GRANTED**.

¹ The instant application became abandoned on July 25, 2001 for failure to submit a timely and proper reply to the "Notice to File Missing Parts of Nonprovisional Application." On December 27, 2001, applicant filed a petition to revive under 37 CFR 1.137(b), which was granted in a decision mailed March 26, 2002. Upon revival, the application file was forwarded for consideration of the instant petition to accord a filing date.

² See 37 CFR 1.181(f).

Figure 11B submitted with the application on January 8, 2001 will be entered in the prosecution of the application. However, the record also reveals that the Figure 11B submitted with the application on January 8, 2001 was a blank drawing sheet, different from the Figure 11B submitted with the instant petition on September 24, 2001. Applicant may resubmit the matter included in the Figure 11B submitted with the instant petition as a Preliminary Amendment for consideration by the examiner before a first Office action on the merits.

Given the basis for granting this petition, the petition fee has been refunded to Deposit Account No. 02-4377, as authorized.

The application file is being returned to the Office of Initial Patent Examination for further processing with a filing date of January 8, 2001, using the drawings submitted on that date, and for processing of the substitute drawings (with the exception of Figure 11B) filed December 27, 2001.

Telephone inquiries related to this decision should be directed to Petitions Attorney Cliff Congo at 703-305-0272.

Beverly M. Flanagan
Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy